

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

IN RE: A.D. ARMSTRONG,

Plaintiff,

:

Case No. 3:10-mc-020

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

ORDER

This matter is before the Court on referral from the United States Department of Justice of correspondence received Mr. A.D. Armstrong.

Although Mr. Armstrong is a prisoner and therefore would be liable to pay the full filing fee if he himself caused the filing of this case, no fee is assessed under the Prisoner Litigation Reform Act because the matter was forwarded by the DOJ.

In his letter of October 2, 2010, Mr. Armstrong asks the DOJ for help concerning his present incarceration on a conviction on which he says he is innocent. He states he wants to file a suit against the courts or the State of Ohio on the basis of his conviction. At another place he states he wants to transfer the venue of his state criminal case from state to federal court.

A lawsuit cannot be filed against the State of Ohio on account of Mr. Armstrong's conviction unless the conviction has been set aside on direct appeal or habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487(1994). But Mr. Armstrong's conviction has not been set aside. There is no way to transfer a criminal case from the Common Pleas Court to federal court after a conviction except by petition for writ of habeas corpus. Mr. Armstrong previously filed such a case in this Court, *Armstrong v. Warden*, Case No. 3:06-cv-219. That case was dismissed with prejudice and the

dismissal was upheld on appeal. A person may not file a second habeas corpus case without permission of the Court of Appeals, which Mr. Armstrong has not received.

Accordingly, this matter is ORDERED closed on the docket without further court action.

October 20, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge